

REMARKS:

Claim 1 has previously been cancelled and claims 2-91 and 97-111 have previously been withdrawn.

Claims 92-96 are presented for further consideration by the Examiner.

Reconsideration and withdrawal of the outstanding rejections is respectfully requested in light of the above amendments and following remarks.

Claim 92 has been amended in order to more particularly point out and distinctly claim the invention. Applicants expressly reserve the right to pursue broader claims in this or another application.

TELEPHONE INTERVIEW:

The courtesy extended by Examiner Fadok in granting a telephone interview on 27 October 2005 is noted with appreciation. During the telephone interview, Applicant pointed out that, contrary to the indication in the Office Action, support for paragraph (d) of claim 92 is provided in earlier applications to which the present application claims priority, including the provisional patent application filed 21 October 2000. Applicant also proposed amending claim 92 to clarify the "standard shipping container" is a shipping container comprising an at least 20 foot standard shipping container. For example, the "standard shipping container" can be a 20 or 40 foot container. The Examiner indicated that such an amendment would likely be helpful in overcoming the present rejection.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 92-96 stand rejected under 35 U.S.C. § 103(a) over Pallakoff (U.S. Patent No. 6,269,343) in view of Tuttrup (U.S. Patent Application Publication No. 2002/0038266).

This rejection is respectfully traversed.

Claim 92, as amended, recites in part:

(d) utilizing at least one visual representation of shipping space available within a standardized shipping volume in said distributed data processing system to communicate over time whether or not sufficient financial commitments have been obtained from said plurality of potential purchasers to fill one or more standard shipping containers, *the one or more standard shipping containers comprising an at least 20 foot standard shipping container.*

(Emphasis added). Pallakoff and Tuttrup both fail to disclose or suggest all of the limitations of claim 92, including the specific limitations pointed out above. For example, Pallakoff and Tuttrup both fail to disclose or suggest utilizing at least one visual representation of shipping space available within a standardized shipping volume to communicate over time whether or not sufficient financial commitments have been obtained to fill one or more standard shipping containers, where the one or more standard shipping containers comprise an at least 20 foot standard shipping container.

In light of the above, it is respectfully submitted that claim 92, and claims 93-96 depending from claim 92, are in condition for allowance, and notice to that effect is respectfully requested.

Accordingly, it is respectfully submitted that claims 92-96 are in condition for allowance, and notice to that effect is respectfully requested.

The Legal Standard for Obviousness Rejections Under 35 U.S.C. § 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q.

580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

CONCLUSION:


No fees are deemed to be necessary; however, the undersigned hereby authorizes the Director to charge any fees that are necessary, or credit any overpayments, to Deposit Account No. **502806**.

Please link this application to Customer Nos. 38441 and 50779 so that its status may be checked via the PAIR System.

Respectfully submitted,

Date

1/23/06


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